



February 19, 2002

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal & Compliance
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2002-0773

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158736.

The Texas Department of Insurance (the "department") received four requests from the same requestor for utilization review licensing filings and related documents filed by Kelsey-Seybold Clinic ("Kelsey-Seybold") from 1997 through 1999. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. Further, you state that you have notified Kelsey-Seybold of the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business-days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. The department received the four requests at issue here on November 26, 2001. However, the

department did not submit three of the four requests until December 21, 2001, more than fifteen business-days after the department's receipt of these requests. Therefore, the department failed to submit three of the four requests within the fifteen-business-day deadline as required by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). As section 552.101 provides a compelling reason to overcome the presumption of openness, we will address your arguments under that exception. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You raise section 552.101 in conjunction with article 21.58A of the Insurance Code, which relates to Health Care Utilization Review Agents. Article 21.58A provides in part:

(i) Each utilization review agent shall utilize written medically acceptable screening criteria and review procedures which are established and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, dentists, and other health care providers. . . . Such written screening criteria and review procedures shall be available for review and inspection to determine appropriateness and compliance as deemed necessary by the commissioner and copying as necessary for the commissioner to carry out his or her lawful duties under this code, provided, however, that *any information obtained or acquired under the authority of this subsection and article is confidential and privileged and not subject to the open records law or subpoena except to the extent necessary for the commissioner to enforce this article.*

Ins. Code art. 21.58A § 4(i) (emphasis added). You inform this office that the requested information includes Kelsey-Seybold's utilization review plan and an amendment to that plan. You assert that this information is confidential under section 4(i) of article 21.58A. We agree. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code.

Next, we address your arguments under section 552.101 in conjunction with Article 20A.17(b)(2) of the Insurance Code. Article 20A.17(b)(2) provides:

A copy of any contract, agreement, or other arrangement between a health maintenance organization and a physician or provider shall be provided to the commissioner. . . . Such documentation provided to the commissioner under this subsection shall be deemed confidential and not subject to the open records law.

You contend that one of the submitted documents is confidential under article 20A.17(b)(2) because it consists of a contract between Kelsey-Seybold Medical Group, P.A., a health maintenance organization, and KS Management Services, L.L.P., a provider. After reviewing the contract at issue, we agree that it is confidential under article 20A.17(b)(2) of the Insurance Code and, thus, must be withheld from the requestor.

You also assert that the social security numbers contained in responsive biographical affidavits are also confidential under section 552.101. Section 56.001 of the Occupations Code provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 56.001.¹ You explain that the biographical affidavits were submitted to the department with applications for a utilization review agent license under article 21.58A of the Insurance Code. Accordingly, we find that the social security numbers fall under section 56.001 of the Occupations Code, as encompassed by section 552.101, and therefore must be withheld.

The department takes no position as to whether any of the remaining submitted information is excepted from public disclosure. The department believes, however, that Kelsey-Seybold may have a proprietary interest in some of that information. An interested third party is allowed ten business-days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that

¹The language of section 56.001 of the Occupations Code corresponds in substance to the language of the former note to section 51.251 of the Occupations Code. House Bill No. 2812, which enacted section 56.001, also repealed the note to section 51.251. See Act of May 22, 2001, 77th Leg., R.S., § 14.001(b), 2001 Tex. Sess. Law Serv. 3970, 4098 (Vernon's) (repealing section 1, chapter 314, Acts of the 76th Legislature, Regular Session, 1999).

party should be withheld from public disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments for withholding the requested information from Kelsey-Seybold. We thus have no basis for concluding that any of the remaining information must be withheld from disclosure. See Open Records Decision Nos. 552 at 5 (1990) (stating that if governmental body takes no position, attorney general will grant exception to disclosure under statutory predecessor to Gov't Code § 552.110(a) if third party makes *prima facie* case that information qualifies as trade secret under section 757 of Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under Gov't Code § 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm).

To summarize: (1) we have marked the information that must be withheld under section 552.101 of the Government Code; and (2) the remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 158736

Enc: Submitted documents

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